

**STATE OF MAINE**

**DEPARTMENT OF MARINE RESOURCES**

<b>IN THE MATTER OF THE APPLICATION</b>	)	
<b>OF ED HUTCHINSON FOR A LIMITED-</b>	)	
<b>PURPOSE AQUACULTURE LEASE</b>	)	
<b>NORTH OF ST. HELENA ISLAND,</b>	)	
<b>STONINGTON, HANCOCK COUNTY, MAINE</b>	)	
		<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION</b>

On August 8, 2001, Ed Hutchinson of Stonington, Maine applied for a limited-purpose (experimental) commercial type, aquaculture lease totaling 1.86 acres in the coastal waters of the State of Maine, located north of St. Helena Island, Stonington, Hancock County, Maine. The applicant requested the lease for a term of three (3) years for the purpose of cultivating blue mussels (*Mytilus edulis*) using suspended culture techniques.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a limited-purpose lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

A public hearing on this application was held on March 25, 2002 at 6:00 p.m. in Stonington.

**Evidence Introduced Concerning the Nature**  
**and Impact of the Proposed Lease**

Ed Hutchinson, hereafter referred to as the applicant, provided testimony and answered questions on the application. The applicant testified that he has been a fisherman all his life, starting with lobster trapping when he was 4 years old growing up in Stonington. He fished scallops offshore on Georges Bank, the Great South Channel and off Cape Cod for many years, then returned to Stonington. Over the past year he has fished lobster or dug clams until he was unable to continue to fish for lobster due to medical reasons. The applicant explained that the mussel rafts would allow him to continue work on the water in a manner that would be compatible with his health restrictions. Exhibits 1 & 2.

According to the application the proposed lease area, 135' x 600', would contain up to three tandem 40' x 40' rafts. Each raft is floated by three 3' x 40' pontoons that are connected and overlain by a frame of five 40' steel "I" beams. The "I" beams support eighty 3" x 4" wooden crossbeams. The crossbeams support a total of 450 dropper lines. Each dropper line would be a 50' length of ½-inch diameter rope. If necessary, each raft may have a 50' deep, standard 4-6 inch mesh, predator net hung around the raft perimeter to deter losses to diving ducks. The net would be periodically removed to air dry and remove fouling organisms. The rafts would be moored using four large 3 – 4 ton granite moorings with 1-inch chain and 1½-inch polysteel for tackle in lengths that would provide a 3:1 scope to accommodate the water depths. The tandem rafts would be hooked together using 30' of 1-inch chain and secured by the same 4 moorings. The overall dimensions of three rafts plus the spacing between them, on the surface, would be 40' wide by 180' long and the remaining proposed lease area, within the overall dimensions of 135' by 600', would be used to encompass the moorings and tackle.

The applicant testified that the dropper ropes would be "seeded" with mussels once per year, generally in the spring over a 2 – 3 week period. An "AGUIN" seed machine, available from Great Eastern Mussel Farm, Inc., or purchased by the applicant, would be used to wrap seed mussels onto the ropes using a biodegradable cotton mesh, with 6-inch plastic pegs inserted in

the rope every foot to prevent the mussels from sliding off. Mussels would be raised to marketable size in approximately 16 –18 months. At harvest the applicant would contract harvesting by Great Eastern Mussel Farms Inc. using their harvest barge. Harvest would take approximately 2 – 3 weeks. Throughout the rest of the year the rafts would be checked almost daily for monitoring and maintenance. The applicant would gain access to the site with his boat that he has a permit for to tie up at the Stonington fish pier.

The applicant testified that the proposed lease site is located in an area suggested by local lobster fishermen because they consider it poor lobster fishing ground due to the soft mud sediments lobsters generally do not prefer. The applicant explained that other areas in more shallow depths tend to be harder bottom and therefore are used for lobster fishing. The deeper depth of the site was therefore selected to avoid lobster type fishing bottom and to accommodate the 50' dropper lines, which would allow a 35' clearance beneath the dropper lines and ocean floor. The site was selected for the protection from the southwest winds and seas as the nearby islands would provide protection from weather coming from the southwest that he considers to be the most treacherous and important to avoid. The applicant also testified that if the proposed lease were granted and found to be successful that he would not seek to expand the size of the proposed lease in the future if he were to seek a longer-term lease.

The applicant testified that the southeast corner of the proposed lease lies approximately 290' from the nearest shore on St. Helena Island; and that the southwest corner of the proposed lease lies approximately 1120' from the shore of Potato Island located due southwest. He explained that the proposed site is located on the south side of the channel as far out of the navigational way as possible and yet as far from the nearest shore of St. Helena Island as possible to avoid lobster bottom fished along that shore. He testified that lobster traps are set in pairs and that traps are set on the sandy rocky bottom near the shore. In his opinion, the typical 30' to 35' lobster boats would have adequate room to navigate haul and set gear between the proposed lease and the nearby shore. He stated that no one sets traps on the 85' mud bottom area of the propose lease. At the peak of the fishing season he stated that there would be 15 –

20 trap buoys along the shore nearest the proposed lease area. The applicant stated that the area is not fished for scallops. According to the application lobster, commercial and recreational fishing would be allowed on the open areas of the proposed lease.

The application contained a letter from the local Harbormaster who indicated that there were no moorings in the general area, that local fishermen have indicated the proposed site would not interfere with lobster, urchin or scallops vessels in the area and that the site would not be considered a navigational hazard and indicated that the Coast Guard should be contacted to inquire of the potential need for night navigation lighting.

According to the application the bottom sediments are “rotten” mud as it has been a site used to place sediments dredged from Stonington Harbor. The water depths at low and high tides are approximately 60-80' at low tide and 70-90' at high tide. The maximum current speed is 0.4 knots running east and west. The water depth allows for an approximate 35' clearance between the sea floor and bottom of the dropper lines. According to the application a diver who surveyed the site observed no organisms. The southern boundary of the proposed lease lies along the 60' depth contour then drops off going north.

The source of blue mussel seed would come from spat collected on the proposed lease site or would be purchased from a source in Maine such as the mussel nursery operated by Paul Brayton located in Blue Hill.

In response to concerns expressed by the riparian representative of the owners of St. Helena Island, the applicant testified that he would be willing to accept a condition on the proposed lease if it were granted, that would prohibit the use of firearms for the purpose of any predator control.

A Department biologist testified regarding observations that he made during a visit at the site on January 30, 2002. He testified that he confirmed the location of the proposed corners and collected geodetic coordinates at the nearest points of land using a survey quality differential global positioning system (dGPS). He explained that the shoreline points collected were conservative as the coordinates were taken while aboard a vessel maintaining a safe distance

from the rocky shore. The distance to the nearest point of land on St. Helena Island from the proposed southeast corner would be approximately 245'; from the southwest corner to St. Helena Island approximately 388'; from the northeast corner to Buoy "N 4" approximately 498'; from the northwest corner to the one-foot depth mark due north approximately 679'; and from the northwest corner to the Stonington Pier approximately 8086'. In the biologist's opinion, there should be adequate room for navigation in the area given the approximate 500' of navigable waterway. He recommended that the applicant consult with the US Coast Guard regarding any necessary night navigation lighting requirements. According to the biologist's report no moorings were observed and in his opinion the proposed lease is an unlikely area to be used for transient anchorage due to the deep-water depths. In his opinion no interference is anticipated with riparian ingress or egress and no dwellings or docks were observed within the vicinity of the proposed lease. The biologist also testified that he recently re-contacted the local Harbormaster to inquire if the Harbormaster's favorable opinion expressed in the letter contained in the application had changed. The Harbormaster indicated that his opinion had not changed.

Fishing activity observed during the site visit, including 5 trap buoys near the shore, was described as minimal and understandable for the time of year however, mud bottom such as found on the proposed lease site is generally considered unfavorable for lobster at any time of year. According to the biologist's report the proposed lease is not located within any designated significant or Essential Wildlife Habitats regulated by the Department of Inland Fisheries and Wildlife (IF&W). The biologist testified that the proposed lease falls within an area classified as "open approved" for the harvest of shellfish by the Department's Public Health, Water Quality Division. Exhibit 3.

Chief Kenneth C. Hill of the US Coast Guard, Aids to Navigation Team stationed in Southwest Harbor provided testimony on the proposed lease regarding navigation. He testified that the proposed lease boundaries are located inside the outer limits of the navigable waterway. In his opinion, taking into account the width of the waterway and the type of vessels that normally transit the area the proposed lease would not be a hazard to navigation. He recommended that

the proposed lease, if granted, be marked with retro reflective tape. He also indicated that it may be prudent to apply for a class 1 private aids to navigation permit however, he would defer the opinion on that permit's requirements to the Coast Guard office in Boston that issues those types of permits. The applicant testified that he has already applied to the US Coast Guard for the aids to navigation permit and stated that the permit he received requires him to mark the site with 4 balloons that have retro reflective tape. He stated that no navigation lights are required in this permit. A representative from the US Army Corps of Engineers (ACOE) indicated that their permit process would also review the marking requirements with the Coast Guard.

A representative of the riparian owners of St. Helena Island testified that the protective measures in the decision criteria were inadequate for private landowners compared to public land ownership. He expressed concern that the applicant could apply for a permit to use firearms for predator control and given the 80-yard distance to the island shore that his family uses for walking he indicated that errant buckshot could easily reach the shore. He requested that a condition be applied if the lease were granted that would prohibit the use of firearms for predator control. As previously indicated, the applicant indicated willingness to accept such a condition.

### **Findings of Fact**

The proposed lease is located in water depths ranging from 60-80' at low tide and 70-90' at high tide and is located approximately 245' - 388' from the north shore of St. Helena Island. The local Harbormaster and Department biologist confirmed that there are no moorings or docks in the vicinity of the proposed lease. The applicant expressed no need or request to use riparian property. The applicant testified that he would be willing to accept a condition that no firearms would be used on the site for the purpose of predator control measures. Based on the evidence that there is adequate room for riparian ingress and egress, I find that the proposed lease will not unreasonably interfere with the ingress and egress of riparian owners with the applicant's willingness to accept the riparian request to not utilize firearms on the lease for the purpose of predator control.

According to the biologist's report there is approximately 500' to US Coast Guard buoy "N 4", approximately 679' due north to the one-foot depth contour across the channel, and, according to the application, over 1100' to Potato Island due southwest. The immediate vicinity of the proposed lease site was characterized as navigated primarily by lobster fishermen tending lobster traps along the island shores. Evidence from the local Harbormaster, testimony by the biologist and testimony from a US Coast Guard representative all indicated that the proposed lease is not considered a navigation hazard. Each official indicated that the applicable US Coast Guard private aids to navigation permit be acquired by the applicant. Based on the testimony and evidence, I find that the lease will not unreasonably interfere with navigation.

The site is located in an area classified by the Department as "open approved" for the harvest of shellfish. The proposed lease is characterized as having a mud bottom that is not fished for lobster. The site location is recommended by local lobster fishers and the Harbormaster as an area that is not used by lobster fishermen. Lobster, commercial and recreational fishing would be allowed on open areas of the site. The applicant testified that he would not request to expand the acreage, if he is granted the lease and seeks a new lease at the end of the 3-year term. Based on the testimony and evidence, I find that the lease will not unreasonably interfere with fishing, aquaculture leases, or other uses of the area.

The bottom sediments of the proposed lease site are characterized as useless mud with a no marine life observed by a diver according to the application. The blue mussels to be raised would be collected on site or obtained from indigenous nursery sources in Maine. The use of seed mussels dragged from the wild was not requested or suggested. Bottom planting of mussels was not requested. The proposed lease has adequate water depths and other

favorable characteristics to accommodate the proposed activities. The proposed lease is not located within or near any designated significant or Essential Wildlife Habitats regulated by IF&W. Based on this evidence, I find that the proposed lease activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

The seed mussels would be obtained from the site or from a nursery source located in Maine. Dragged seed mussels would not be used. Based on this evidence, I find that there is an available source of blue mussels.

According to the application and the Department biologist's report, the proposed activities would not be located near any public docks/facilities in the area. The nearest municipal facility, the Stonington fish pier, is located approximately 1.5 miles due north-northwest. Based on the evidence, I find that the proposed lease will not unreasonably interfere with public use or enjoyment and that the site is not located within 1,000 feet of any municipally, state or federally owned beaches, parks, or docking facilities.

### **Conclusions of Law**

Based on the above findings, I conclude that:

1. the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. the aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. the aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. the aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. the applicant has demonstrated that there is an available source of blue mussels to be cultured for the lease site; and
6. the aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.



The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

### **Decision**

Based on the foregoing, the Commissioner grants the requested limited-purpose commercial lease of 1.86 acres (135 feet by 600 feet) to the applicant for a period of three (3) years from the date of this decision for the purposes of cultivating blue mussels using a three raft system for suspended cultivation, as described in the record. The applicant shall pay the State of Maine rent in the amount of \$50 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$5,000 conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

### **Conditions to be Imposed on Lease**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. fishing and navigation is allowed on the open areas of the lease;
2. boundary marking shall be in accordance with U.S. Coast Guard and Department of Marine Resources regulations; and
3. firearms are not permitted on the lease for purpose of predator control.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

**Dated:** \_\_\_\_\_

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**George D. Lapointe (Commissioner)**  
**Department of Marine Resources**